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2
3 UNITED STATES DISTRICT COURT
4 DISTRICT OF NEVADA

5 * * *

6 MELVYN P. SPROWSON, JR,

Case No. 3:20-cv-00170-MMD-CLB

7 Petitioner,

ORDER

8 v.

9 RENE BAKER, *et al.*,

10 Respondents.

11 This is a habeas corpus matter under 28 U.S.C. § 2254. Petitioner has filed an
12 application to proceed *in forma pauperis* (ECF No. 1), a motion for appointment of counsel
13 (ECF No. 1-2), and a petition for a writ of habeas corpus (ECF No. 1-1). The Federal Public
14 Defender then filed a motion for appointment of the Federal Public Defender as counsel
15 for petitioner. (ECF No. 3.) Petitioner is unable to pay the filing fee, let alone afford counsel.
16 The Court will thus grant Petitioner leave to proceed *in forma pauperis*, and the Court will
17 appoint the Federal Public Defender to represent him.

18 It is therefore ordered that the application to proceed in forma pauperis (ECF No.
19 1) is granted. Petitioner need not pay the filing fee of five dollars.

20 It is further ordered that the Clerk of Court file the petition for a writ of habeas corpus
21 pursuant to 28 U.S.C. § 2254, currently docketed at ECF No. 1-1.

22 It is further ordered that the motion for appointment of the Federal Public Defender
23 as counsel for Petitioner (ECF No. 3) is granted. The Federal Public Defender is appointed
24 as counsel for Petitioner pursuant to 18 U.S.C. § 3006A(a)(2)(B). Counsel will represent
25 Petitioner in all federal proceedings related to this matter, including any appeals or
26 certiorari proceedings, unless allowed to withdraw.

27 It further is ordered that Petitioner will have until up to and including 90 days from
28 entry of this order within which to file an amended petition and/or seek other appropriate

1 relief. Neither the foregoing deadline nor any extension thereof signifies or will signify any
2 implied finding as to the expiration of the federal limitation period and/or of a basis for
3 tolling during the time period established. Petitioner always remains responsible for
4 calculating the running of the federal limitation period and timely asserting claims, without
5 regard to any deadlines established or extensions granted herein. That is, by setting a
6 deadline to amend the petition and/or by granting any extension thereof, the Court makes
7 no finding or representation that the petition, any amendments thereto, and/or any claims
8 contained therein are not subject to dismissal as untimely. See *Sossa v. Diaz*, 729 F.3d
9 1225, 1235 (9th Cir. 2013).

10 It is further ordered that the Clerk of Court add Aaron Ford, Attorney General for
11 the State of Nevada, as counsel for Respondents.

12 It is further ordered that Respondents' counsel must enter a notice of appearance
13 within 21 days of entry of this order.

14 It is further is ordered that the Clerk of Court provide copies of all prior filings to
15 both the Attorney General and the Federal Public Defender in a manner consistent with
16 the Clerk of Court's current practice, such as regeneration of notices of electronic filing.

17 It is further is ordered that Respondents must file a response to the amended
18 petition, including potentially by motion to dismiss, within 60 days of service of an amended
19 petition, and that Petitioner may file a reply within 30 days of service of an answer. The
20 response and reply time to any motion filed by either party, including a motion filed in lieu
21 of a pleading, will be governed instead by Local Rule LR 7-2(b).

22 It is further ordered that any procedural defenses raised by Respondents to the
23 counseled amended petition must be raised together in a single consolidated motion to
24 dismiss. In other words, the Court does not wish to address any procedural defenses
25 raised herein either in serial fashion—in multiple successive motions to dismiss or
26 embedded in the answer. Procedural defenses omitted from such motion to dismiss will
27 be subject to potential waiver. Respondents may not file a response in this case that
28 consolidates their procedural defenses, if any, with their response on the merits, except

1 pursuant to 28 U.S.C. § 2254(b)(2) as to any unexhausted claims clearly lacking merit. If
2 Respondents do seek dismissal of unexhausted claims under § 2254(b)(2): (a) they must
3 do so within the single motion to dismiss not in the answer; and (b) they must specifically
4 direct their argument to the standard for dismissal under § 2254(b)(2) set forth in *Cassett*
5 *v. Stewart*, 406 F.3d 614, 623-24 (9th Cir. 2005). In short, no procedural defenses,
6 including exhaustion, may be included with the merits in an answer. All procedural
7 defenses, including exhaustion, instead must be raised by motion to dismiss.

8 It is further ordered that, in any answer filed on the merits, Respondents must
9 specifically cite to and address the applicable state court written decision and state court
10 record materials, if any, regarding each claim within the response as to that claim.

11 It is further ordered that, notwithstanding Local Rule LR IC 2-2(g), paper copies of
12 any electronically filed exhibits need not be provided to chambers or to the staff attorney,
13 unless later directed by the Court.

14 DATED THIS 1st day of April 2020.



MIRANDA M. DU
CHIEF UNITED STATES DISTRICT JUDGE